IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO. 443 OF 2000
IN
COMPANY PETITION NO.974 OF 1999

Shailesh Asalraj Jain
having address at B/601, Jain Park,
Love Lane, Byculla (East),
Mumbai 400 027. Appellant
(original Petitioner)

vs.

Himanshu Synthetics Pvt.Ltd.,
a Private Limited Company,
incorporated under the Indian
Companies Act, having its Registered
Office at Ram Prabha, Ist floor,
Khandubhai Desai Road,Vile parle(West),
Mumbai 400 056.

and also at, A-601, Krisnaraj Galli,
M.J. Market, 1st floor,
Mumbai 400 002. Maharashtra. Respondent
(original Company)

Mr.Birendra Saraf i/b. Mr.Kiran Jain for the appellant.

None for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 2nd September 2004

ORAL JUDGMENT (Per R.M. Lodha,J.):

Heard.

2. The learned Company Judge found that there was serious dispute in respect of the appellant's claim. It is not in dispute that in response to the notice given

by the appellant to the respondent under Section 434 of the Companies Act, 1956, the respondent company sent reply immediately and inter-alia set up its reply thus:

> "3. My clients state that your client Shri Shailesh Asalraj Jain is a Finance Broker. My clients had friendly relations with him. A few months back my clients M/s.Himanshu Synthetics Pvt. Ltd. were in need of some finance. Since my clients were knowing your client, they requested him to arrange some money. Your client agreed to do so and he took my clients' signature on some blank Bills of Exchange and promised to arrange the finance from his own customers against those blank Bills of Exchange. However, your client did not arrange any finance to my clients. My clients were demanding back those blank Bills of Exchange. Your client was promising to return them back to my clients duly cancelled but so far he has not done so."

3. It is apparent from the available material that the respondent company has denied receipt of the amount of Rs.80,000/- as alleged. The learned Company Judge was satisfied that in the light of the defence set up by the respondent company that the amount of Rs.80,000/- was in fact not received and there being dispute with regard to the presentation of Bill of Exchange, the case for entertaining the company petition was not made out and that appellant must pursue appropriate remedy. We hardly find any justifiable ground to take a different view.

4. The learned counsel for the appellant submitted that the time taken in the winding up petition and the appeal

needs to be excluded to enable the appellant to pursue appropriate remedy for redressal of his grievance. He invited our attention to the judgment of the Division Bench of this Court in the case of Maharashtra State Farming Corporation Ltd. v. Belapur Sugar and Allied Industries Ltd., 2004 (3) Mh.L.J. 414.

5. The respondent company has not chosen to appear despite service. We are satisfied that the appellant pursued winding up petition and the appeal diligently and bonafide and the time taken in the said proceedings deserves to be excluded. We, accordingly, observe that the time taken by the appellant in prosecuting the winding up petition and the appeal shall be excluded under Section 14 of the Limitation Act, 1963 in case the appellant prosecutes the ordinary remedy of suit for recovery of due amount from the respondent-company.

6. Appeal fails and is dismissed with the observations aforemade.

7. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)